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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-190808

DATE: January 16, 1978

MATTER OF: Bally Case & Cooler, Inc.

DIGEST

Potential second-tier subcontractor's protest concerning contract award by first-tier subcontractor under grant will not be considered on merits because subcontract award was not "by or for" grantee under tests enumerated in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

Bally Case & Cooler, Inc. (Bally), has protested the decision of the Lord Mechanical Company (Lord) to purchase insulated panels from Star Stainless Caribbean, Inc. (Star), rather than from it. Lord is a subcontractor under a prime contract awarded to the Pavarini Construction Company by the Puerto Rico Commercial Development Company (PRCDC), a grantee of the Department of Commerce, Economic Development Administration, under project No. 01-01-01337.

Bally alleges that Star is not a responsible contractor and is incapable of meeting the contract specifications for insulated panels. This, then, is a protest at the second-tier subcontract level concerning the award of a second-tier subcontract under a grant.

In a Public Notice entitled "Review of Complaints Concerning Contracts Under Federal Grants", 40 Fed. Reg. 42406, September 12, 1975, GAO issued the standards and procedures under which we will consider such complaints. Generally, the purpose of our review is to foster compliance with grant terms, agency regulations, and applicable statutory requirements. In accordance with the intent of that Notice, we consider complaints regarding the award of a subcontract under a grant when the award can be said to be "by or for" the grantee under the tests enunciated in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Custom Control Panels, B-189065, July 14, 1977, 77-2 CPD 28.

Additionally, we have stated that we will consider second-tier subcontract protests under the tests enumerated

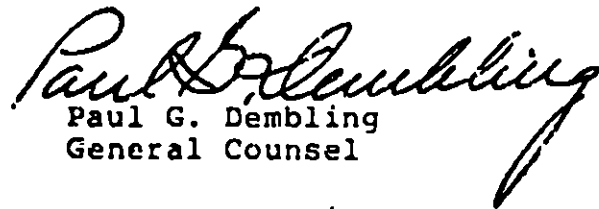
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in Optimum Systems, Inc., supra. Sargent Industries, B-188220, February 23, 1977, 77-1 CPD 133. It is recognized, however, that as the subcontract tiers increase, the involvement by the Government in such subcontracts is necessarily more difficult to establish, and it therefore becomes more difficult to meet the criteria required by Optimum Systems before we will consider the protests on the merits. Sargent Industries, supra.

Under Optimum Systems, our Office will consider subcontract protests only: (1) where the prime contractor is acting as the purchasing agent of the Government; (2) where the active or direct participation of the Government in the selection of a subcontractor has the net effect of causing or controlling the rejection or selection of potential subcontractors, or of significantly limiting subcontractor sources; (3) where fraud or bad faith in the approval of the subcontract award by the Government is shown; (4) where the subcontract award is "for" the Government; or (5) where a Federal agency entitled to the same requests an advance decision.

Since this is a subcontract under a grant, the tests enumerated above must be applied to involvement of the grantee rather than the Government in subcontractor selection. In this case, Bally has not shown the PRCDC was involved in any direct manner in Lord's subcontractor selection. The only involvement that the PRCDC appears to have is to ensure that the product delivered under the subcontract meets the contract specifications.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel